

§ 3202.4 Criteria for product eligibility to use the certification mark.

A product must meet each of the criteria specified in paragraphs (a) through (c) of this section in order to be eligible to receive biobased product certification.

A product must meet each of the criteria specified in paragraphs (a) and (b) of this section in order to be eligible to receive biobased product certification.

(a) *Biobased product.* The product for which certification is sought must be a biobased product as defined in § 3202.2 of this part.

(b) *Minimum biobased content.* The biobased content of the product must be equal to or greater than the applicable minimum biobased content, as described in paragraphs (b)(1) through (b)(4) of this section.

(1) *Qualified Biobased Products.* —(i) *Product is within a single product category.* If the product is within a single product category that, at the time the application for certification is submitted, has been designated by USDA for Federal preferred procurement, the applicable minimum biobased content is the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(ii) *Product is within multiple product categories.* If a biobased product is marketed within more than one product category identified for preferred Federal purchasing, uses the same packaging for each product, and the applicant seeks certification of the product, the product's biobased content must meet or exceed the specified minimum biobased content for each of the applicable product categories in order to use the certification mark on the product. However, if the manufacturer packages the product differently for each product category, then the applicable minimum biobased contents are those established under paragraph (b)(1)(i) of this section for each product category for which the applicant seeks to use the certification mark.

(2) *Finished biobased products that are not Qualified Biobased Products.* (i) If the product is not an intermediate ingredient or feedstock, and is not within a product category eligible for Federal preferred procurement at the time the application for certification is sub-

mitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the product to be labeled.

(ii) If a product certified under paragraph (b)(2)(i) of this section is within a product category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(3) *Products that are intermediate ingredients or feedstocks.* (i) If the product is an intermediate ingredient or feedstock that is not eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the intermediate ingredient or feedstock product to be labeled.

(ii) If a product certified under paragraph (b)(3)(i) of this section is within a category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(4) *Finished products that are complex assemblies.* (i) If the product is a complex assembly, as defined in subpart A of 7 CFR part 3201, that is not eligible for federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. The biobased content shall be determined using the procedures specified in §3201.7(c)(3) of this chapter. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the complex assembly to be labeled.

(ii) If a product certified under paragraph (b)(4)(i) of this section is within a category that USDA subsequently designates for federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(c) *Innovative approach.* In determining eligibility for certification under the BioPreferred Program, USDA will consider as eligible only those products that use innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the biobased product. USDA will consider products that meet one or more of the criteria in paragraphs (c)(1) through (4) of this section to be eligible for certification. USDA will also consider other documentation of innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of biobased products on a case by case basis. USDA may deny certification for any products whose manufacturers are unable to provide USDA with the documentation necessary to verify claims that innovative approaches are used in the growing, harvesting, sourcing, pro-

curing, processing, manufacturing, or application of their biobased products.

(1) *Product applications.* (i) The biobased product or material is used or applied in applications that differ from historical applications; or

(ii) The biobased product or material is grown, harvested, manufactured, processed, sourced, or applied in other innovative ways; or

(iii) The biobased content of the product or material makes its composition different from products or material used for the same historical uses or applications.

(2) *Manufacturing and processing.* (i) The biobased product or material is manufactured or processed using renewable, biomass energy or using technology that is demonstrated to increase energy efficiency or reduce reliance on fossil-fuel based energy sources; or

(ii) The biobased product or material is manufactured or processed with technologies that ensure high feedstock material recovery and use.

(3) *Environmental Product Declaration.* The product has a current Environmental Product Declaration as defined by International Standard ISO 14025, Environmental Labels and Declarations—Type III Environmental Declarations—Principles and Procedures.

(4) *Raw material sourcing.* (i) The raw material used in the product is sourced from a Legal Source, a Responsible Source, or a Certified Source as designated by ASTM D7612—10, Standard Practice for Categorizing Wood and Wood-Based Products According to Their Fiber Sources; or

(ii) The raw material used in the product is 100% resourced or recycled (such as material obtained from building deconstruction); or

(iii) The raw material used in the product is from an urban environment and is acquired as a result of activities related to a natural disaster, land clearing, right-of-way maintenance, tree health improvement, or public safety.

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